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Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 1970

No. 1226

DAMIAN GARCIA MERCADO,
PETITIONER,

v.

SUPERIOR COURT OF PUERTO RICO
and ALCOA STEAMSHIP CO., INC.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

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In the
Supreme Court of the United States

OCTOBER TERM, 1970

No.

DAMIAN GARCIA MERCADO,
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v.

SUPERIOR COURT OF PUERTO RICO
and ALCOA STEAMSHIP CO., INC.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico, entered in the above entitled case on October 14, 1970.

Opinions Below

The Order of the Superior Court, San Juan Part, dated March 4, 1966, is printed as Appendix A. The Per Curiam Opinion and Judgment of the Supreme Court are printed as Appendix B.

Jurisdiction

The judgment of the Supreme Court of the Commonwealth of Puerto Rico was made and entered on October 14, 1970, and copy thereof is appended to this petition as Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C.A. §1258 and Rule 19 of the Supreme Court Rules.

Questions Presented

The question presented for review is:

May the Courts of Puerto Rico deny an American seamen injured aboard an American vessel on the high seas the right to a jury trial in a suit brought under the provisions of the Jones Act, 46 U.S.C. §688, which provides in part:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election maintain an action for damages at law, with the right of a trial by jury..."

This question necessarily comprises many subsidiary questions:

(a) Is the right to jury trial under said statute a substantive right?

(b) May the Superior Court of Puerto Rico, which grants jury trials in criminal cases only, ignore the uniformity requirement under the Jones Act?

(c) Is the denial of petitioner's right to a jury trial under the Jones Act a denial of his rights, privileges and immunities as a citizen of the United States, which Puerto Rico is bound to honor under the terms of the Federal Relations Act, 48 U.S.C. §737, the Constitution of the

United States: Article III, Section 2; Article IV, Section 2, Clause 1, Article VI, Clause 2 and Amendment XIV, section 1?

Constitutional Provisions, Treaties Statutes and Rules Involved

The constitutional provisions involved are:

1. UNITED STATES CONSTITUTION, ARTICLE III, §2:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State; — between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subject."

2. ARTICLE IV, §2, CLAUSE 1:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

3. ARTICLE IV, §3, CLAUSE 2:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be con-

strued as to Prejudice any Claims of the United States, or of any particular State."

4. ARTICLE VI, CLAUSE 2:

"This Constitution, and Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

5. AMENDMENT XIV, SECTION 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The statutes involved are:

1. 46 U.S.C. §688:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such sea-

man may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Mar. 4, 1909, c. 153, § 20, 38 Stat. 1185; June 5, 1920, c. 250, § 33, 41 Stat. 1007."

2. 48 U.S.C. § 734:

"The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws other than those contained in the Philippine Trade Act of 1946: *Provided, however*, That after May 1, 1946, all taxes collected under the internal revenue laws of the United States on articles produced in Puerto Rico and transported to the United States, or consumed in the island shall be covered into the Treasury of Puerto Rico. Mar. 2, 1917, c. 145, § 9, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158; Apr. 30, 1946, c. 244, Title V, § 513, 60 Stat. 158."

3. 48 U.S.C. § 737:

"The rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of section 2 of article IV of the Constitution of the United States. Mar. 2, 1917, c. 145, § 2, 39 Stat. 951; Feb. 3, 1921, c. 34, § 1, 41 Stat. 1096; May 17, 1932, c. 190, 47 Stat. 158; Mar. 2, 1934, c. 37, §1, 48 Stat. 361; Aug. 5, 1947, c. 490, § 7, 61 Stat. 772."

4. 48 U.S.C. § 749:

"The harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the control of the government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters. Nothing in this chapter contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917. Mar. 2, 1917, c. 145, § 8, Stat. 945; May 17, 1932, c. 190, 47 Stat. 158;; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501."

Statement

Petitioner, a seaman, was injured on the high seas while working on board the S. S. Alcoa. On May 13, 1965 he filed a complaint in the Superior Court of Puerto Rico, San Juan Part, Civil No. 65-2085, in which he claimed rights

and benefits accorded by the Jones Act, 48 U.S.C. §688, (Translated copy of the complaint is included as Appendix C). An answer was filed by defendant (Translated copy of which is included as Appendix D), and on February 1, 1966, petitioner filed a motion entitled, "Motion for Trial Setting and for Assignment to a Courtroom Having Facilities for Jurors." (Translated copy of which is included as Appendix E). After hearing on the motion, the Superior Court on March 4, 1966 denied petitioner's request (Appendix A).

To review that denial, a petition for a writ of certiorari was filed in the Supreme Court of Puerto Rico on May 4, 1966, and on May 19, 1966 the Writ of Certiorari was issued. The Solicitor General of the Commonwealth of Puerto Rico intervened and, together with Alcoa Steamship Co., opposed petitioner's request for a trial by jury. After extensive memoranda of law and oral argument, the Supreme Court of Puerto Rico rendered a *Per Curiam* Opinion on October 14, 1970, affirming the decision of the Superior Court, San Juan Part (Translated copy of the *Per Curiam* Opinion is included as Appendix B).

Reasons for Granting the Writ

THE DECISION OF THE SUPREME COURT OF PUERTO RICO CONFLICTS WITH THE CLEAR WORDING OF THE CONSTITUTION AND STATUTES OF THE UNITED STATES AND WITH THE DECISIONS OF THIS COURT CONSTRUING THE SAME AND SIMILAR STATUTES.

Petitioner, as a United States citizen, is entitled to have his rights, privileges and immunities, "respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of Section 2 of Article IV of the Constitution of

the United States," 48 U.S.C. § 737. As a seaman, he is also entitled to the rights and remedies that Congress has granted in the Jones Act, 46 U.S.C. § 688. Because he was born and resides in Puerto Rico, he availed himself of his right to elect the forum (Admiralty, Federal or State) and filed an action under the Jones Act in the courts of Puerto Rico, demanding trial by Jury. It is now well settled that the statute gives the injured seaman an election between pursuing his remedy in Admiralty or in the civil side of the Federal Court with the right of trial by jury. *Fitzgerald* v. *United States Lines Company*, 374 U.S. 16 (1963). It has been held that such an action may be filed in a state court of general jurisdiction, where the applicable law will be the federal maritime law rather than the state common or statutory law. *Engel* v. *Davenport*, 271 U.S. 33 (1926); *Panama R. Co.* v. *Vasquez*, 271 U.S. 557 (1926); *Garret* v. *Moore McCormack Co.*, 317 U.S. 239 (1942); 2 Norris, The Law of Seamen, §§ 678 and 681, 3rd Edition (1970). The Superior Court of Puerto Rico is one of general jurisdiction (4 L.P.R.A. § 62), can entertain and, as a matter of fact, assumed jurisdiction in this case.

The wording of the Jones Act, "with the right to trial by jury" is quite clear and this Court has so interpreted it:

> "Martin's negligence claim involved a remedy created by Congress in § 33 of the Jones Act, 46 U.S.C. § 688, which explicitly provides that a seaman can have a jury trial as of right." *Fitzgerald* v. *United States Line Company*, supra. at p. 17.

The Jones Act incorporates by reference the provisions of the Federal Employers Liability Act, 45 U.S.C. § 51, which was held applicable to Puerto Rico. *American R. Co.* v. *Didricksen*, 227 U. S. 145, 148, (1912); *American R.*

Co. v. *Birch*, 224 U.S. 547 (1912). Even though this Act contains no mention of a right to trial by jury, this Court has held that right to be a fundamental part of the rights and remedies granted to railroad workers. *Bailey* v. *Central Vermont Railway*, 319 U.S. 350 (1943); *Blair* v. *Baltimore & O. R. Co.*, 323 U.S. 600 (1945). In *Dice* v. *Akron, Canton & Youngstown R. Co.*, 342 U.S. 359, 363 (1952), this Court stated that:

> "the right to trial by jury is too substantial a part of the rights accorded by the Act to permit it to be classified as a mere 'local rule of procedure' for denial in the manner that Ohio has here used."

The right to jury trial in this type of action should be jealously guarded by the courts. *Jacob* v. *City of New York*, 315 U.S. 752, 753 (1942).

The Supreme Court of Puerto Rico denied petitioner's request, relying on part of the Federal Relations Act, particularly 48 U.S.C. §§ 734 and 749:

> §734 "The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States."
>
> §749 "All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters."

On the above-quoted provisions, it concluded that since trial by jury in civil cases has never existed in Puerto Rico,

and because neither local legislation nor the local rules of Civil Procedure provide for such a mode of trial, the jury trial provision of the Jones Act results "locally inapplicable" and local courts are not bound to respect the same.

This interpretation of 48 U.S.C. §§ 734 and 729 is incompatible with 48 U.S.C. § 737, because it results in a violation of petitioner's federal maritime right, which has to be respected in Puerto Rico to the same extent as if Puerto Rico were a state of the Union. If state courts must respect this right, so must the island's courts. To interpret the right to jury trial as being "locally inapplicable" is a radical departure from accepted principles of federal statutory interpretation and is contrary to the proper determination of congressional intent; mainly because, the reasoning of the Supreme Court of Puerto Rico presupposes a Congressional desire to discriminate against the Puerto Rican seamen and to curtail their rights and remedies created for their benefit as seamen. Such unconstitutional purpose cannot be so readily attributed to Congress, especially in view of the clearer, unequivocal language of 48 U.S.C. § 737.

The latter section, enacted on August 5, 1947, was incorporated into the "Bill of Rights" of the Puerto Rican people. On July 3, 1950, Congress approved Public Law 600, c. 446, § 5(1), 64 Stat. 320, whereby the Bill of Rights was repealed, except the rights, privileges and immunities proviso. The Congressional intent for enacting the rights, privileges and immunities clause and for excepting the same from the repeal in 1950 is indicative of a Congressional concern about assuring United States citizens in Puerto Rico their federally created rights, lest these be whittled away by Puerto Rican legislation or lack of legislation. [1947 U.S. Code Cong. Service, p. 1587; 1950 U.S. Code Cong. Service p. 2681]. Thus, the Act of August

5, 1947 (46 U.S.C. § 737) is an exception ("except as hereinbefore or hereinafter otherwise provided") by which 46 U.S.C. §§ 734 and 769 were modified.

In denying petitioner's right under a federal statute, the Supreme Court of Puerto Rico assumed a function which in the last instance belongs to this Court. It has, in effect, ruled that Congress, pursuant to Article III, Section 3, clause 2 of the United States Constitution (Territorial Clause) may delegate to a territory power to obliterate special rights granted by Congress or the Constitution to a class of American citizens. On the other hand, a special right was granted to American seamen by Congress, acting under Article III, Section 2 of the Constitution, and once granted, neither Congress nor territorial legislatures or courts may limit, curtail, modify or deny that right by the mere accident of birth, residence, or choice of forum. Discrimination in the exercise of territorial power over an unincorporated territory to the detriment of United States citizens therein is an invidious and constitutionally infirm as discrimination based on race, color or religious belief. The result reached herein is also contrary to the supremacy clause, Article VI, clause 2, of the United States Constitution. In the specific case of Puerto Rico, a similar exercise of local power was struck down because it conflicted with the treaty-making power, *Bacardi Corporation of America* v. *Domenech*, 311 U.S. 150, 166 (1940); and with an act of Congress, *Allen Corporation* v. *Mejias*, 165 F. Supp. 221 (D.PR. 1958), aff'd. 267 F.2d 550 (1 Cir. 1959). Likewise, equally valid reasons exist herein for striking down a similar exercise of power which conflicts with an act of Congress enacted for the protection of seamen as a class.

The philosophy of unincorporated territory and its "locally inapplicable" *sequelae*, no longer are as accept-

able and fashionable as they used to be. *Reid* v. *Covert*, 354 U.S. 1, 8-9 (1957); *Kinsella* v. *United States*, 361 U.S. 234 (1960). In the case of Puerto Rico, the doctrine is a relic of the past because at present the extent to which federally-created rights of United States citizens residing in Puerto Rico may be affected, altered, or modified is clearly outlined in the Federal Relations Act, particularly 48 U.S.C. §737. Thus, whatever power Congress may have delegated to Puerto Rico pursuant to the territorial clause is now subject to the limitations of the Federal Relations Act, including the respect which must be afforded to the rights, privileges and immunities of American citizens. In this case, Puerto Rico may do no more or no less for petitioner's right to jury trial than a State of the Union.

Unless the opinion below is reversed, the petitioner will have been denied a fundamental right without any social or economic justification. The result reached below is irreconcilable with the authoritative decisions of this Court, the Constitution and laws of the United States, and the axiomatic principle of uniformity in the application of the maritime law. *Panama R. Co.* v. *Johnson*, 246 U.S. 375 (1924); *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917); *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149 (1920); *State of Washington* v. *W. C. Dawson & Co.*, 264 U.S. 219 (1924); *Alcoa S. S. Co.* v. *Velez*, 376 F.2d 521 (1 Cir. 1967).

In construing the applicable law in this case, the Supreme Court of Puerto Rico has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power in protecting and assuring federally created and constitutionally protected rights.

Conclusion

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX A

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPERIOR COURT
SAN JUAN PART

CIVIL No. 65-2085
About: DAMAGES

DAMIAN GARCIA MERCADO,
PLAINTIFF,
v.
ALCOA STEAMSHIP CORP. INC.,
DEFENDANT.

Minutes

G. Gelpi, Esq. appeared at the hearing and discussion of the motion for trial setting and assignment of Courtroom with facilities for jurors.

Mr. Gelpi's arguments having been heard, the Court denies said motion and orders that the case be sent to the Clerk of the Court for a trial setting.

(A $.50 Internal Revenue Stamp cancelled)

(Seal of the Superior Court)

Date: March 4, 1966
Minute Book No. _____
Judge: The Honorable F. Collazo Lizardi
Stenographer: Sra. Nilsa Mojica
Marshal: Mr. Carbonell
Certification: Belen Bonit, Clerk
By: R. Bruno, Assistant Clerk

APPENDIX B

IN THE SUPREME COURT OF PUERTO RICO

No. C-66-47

DAMIAN GARCIA MERCADO,
PETITIONER,
v.
SUPERIOR COURT OF PUERTO RICO, SAN JUAN PART,
FRANCISCO COLLAZO LAZARDI, Judge,
RESPONDENT.

ALCOA STEAMSHIP CO., INC.,
INTERVENOR.

CERTIORARI
San Juan Puerto Rico,
October 14, 1970

PER CURIAM: We issued writ of certiorari in this case to examine whether or not the Superior Court of Puerto Rico, San Juan Part, acted correctly in denying a motion requesting that this civil action be heard before a jury.

The case originated by a complaint filed by Damian Garcia-Morcado, petitioner herein, before the Superior Court, where he alleged that he suffered an accident and physical injuries while working in a vessel owned by defendant, the Alcoa Steamship Corporation. The pleadings do not state the place where the accident occurred, but plaintiff informs us in his Memorandum of Authorities that it did not occur in Puerto Rican waters.[1] In the

[1] If the accident had occurred in Puerto Rican waters the case would have been covered by the Workmen's Accident Compensation Act of Puerto Rico, 11 L.P.R.A. § 1; *Fonseca* v. *Prann*, 282 F.2d 153 (1 Cir. 1960); *Flores* v. *Prann*, 175 F. Supp. 140 (1959); *Inter Island Shipping Corp.* v. *Industrial Commission*, 89 P.R.R. 635 (1963) and authorities cited therein.

Supplementary Report of the Solicitor General, presented on March 5, 1970, we are told that the accident occurred in the waters of or near New Orleans.

In his complaint plaintiff makes four claims. The first one is grounded on negligence and is done by virtue of the Jones Act of 1920; 41 Stat. 1007; 46 U.S.C. § 688. The second claim is grounded on unseaworthiness of the vessel. The third is grounded on his right to receive medical attention on account of the injuries and the fourth claim is grounded on his right to receive maintenance and cure expenses.

When a merchant marine receives personal injuries in the course of his work three causes of action may arise against his employer, the shipping company. One for maintenance and cure; another for damages caused by the unseaworthiness of the vessel; and the third, also for damages caused by negligence pursuant to the provisions of the Jones Act above-cited. The first cause of action mentioned above, that is, maintenance and cure, generally includes three items: (1) maintenance which is a living allowance; (2) cure, which covers medical expenses, and (3) wages.

The afore-cited Jones Act of 1920 which amended the Seaman's Act of 1915, granted to merchant marines essentially the same rights against their employers as those granted by the Federal Employers' Liability Act to railway employees. 35 Stat. 65 (1908) as amended, 45 U.S.C. § 51-60. Those rights thus granted in 1920 include the right to bring the actions for damages before a jury and the right to resort to the doctrine of comparative negligence.

Before we pass into the question raised in this case—that of trial by jury—it is advisable to clarify that the Civil Code of Puerto Rico in its § 1802 grants to all litigants, without exception, the protection of said doctrine of compartive negligence. 31 L.P.R.A. § 5141. Said § 1802 reads as follows:

> "A person who by an act or omission causes damage to another through fault or negligence shall be obliged to repair the damage so done. Concurrent imprudence of the party aggrieved does not exempt from liability, but entails a reduction of the indemnity."

Relying on the afore-mentioned Jones Act of 1920 the plaintiff filed a motion requesting trial by jury before the Superior Court. The motion was denied. The Jones Act (46 U.S.C. § 688) insofar as pertinent provides the following:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; . . ."

Prior to the 1920 amendment the claims which merchant marines could raise for maintenance and cure and for damages caused by unseaworthiness were admiralty actions and were brought before a judge without jury. Through the Jones Act of 1920 Congress sought to equalize the merchant seamen with the other litigants in damages in the United States. That is, it sought to give merchant seamen the right to hear their claims for damages before a jury, as has been traditionally done by the other litigants in the United States. The Jones Act of 1920 then, has an equalizing effect in the United States, but its application in Puerto Rico would have a diametrically opposite effect. This is, in Puerto Rico, where no litigant in damages is entitled to trial by jury, to give that right to seamen would be, not to equalize them to the other litigants, but to grant them a privilege above the others. This would bring about a discrimination against the mass of litigants who are not merchant marines.

In Puerto Rico the action for damages, including what in the United States is called negligence, is brought and has always been brought before a judge without a jury. This has been so ever since courts of justice exist in Puerto Rico, right after this island was discovered and colonized by Spain. As far as we know, no protest has ever been raised here against this system of civil litigation without a jury nor any petitions requesting that the same be changed have been made. Puerto Rico is a civil law jurisdiction and the common law has never been in force here. *Widow of Fornaris* v. *American Surety Co.*, 93 P.R.R. 28, 46 and authorities cited therein. The idea of a jury for civil actions is completely foreign to the system of jurisprudence which operates and has always operated in Puerto Rico.

The Constitution of Puerto Rico guarantees the right to trial by jury in criminal prosecutions for felonies, Art. II § 11; 1 L.P.R.A. p. 219 (1965 ed.), but neither our Constitution nor the Puerto Rican laws provide for a trial by jury in civil actions. The actions of a civil nature are heard and are decided in Puerto Rico by the court without a jury. Judiciary Act of Puerto Rico, Act No. 11 of July 24, 1952, 4 L.P.R.A. §§ 121 and 181; Rule 43.1 of the Rules of Civil Procedure of Puerto Rico, 32 L.P.R.A. App. II, (9 L.P.R.A. p. 191, 1969 ed.). V Clark & Rogers, "The New Judiciary Act of Puerto Rico: A Definite Court Reorganization", 61 *Yale Law Journal* 1147 (1952); Snyder, "New Puerto Rico Judicial System", 36 *Journal of the American Judicature Society* 136 (1953).

It is advisable to clarify that from the point of view of United States law petitioner's request for a trial by jury in this case relies solely on statutory and not on constitutional grounds. In the United States the trial by jury in civil actions of maritime jurisdiction was never known during the time of the colonies nor under the Constitution. Already in *Waring* v. *Clarke*, 5 Howard 441 (1847); 12

L.Ed. 226, 235, it was concluded that what the seventh amendment guarantees is that in suits at common law the trial by jury should be "preserved" and that said amendment is not applicable to suits in admiralty. There being no trial by jury in admiralty there was nothing to preserve in regard to the trial by jury in said maritime law.

It has been decided that state courts have concurrent jurisdiction with federal courts to entertain cases under the Jones Act. *Engel* v. *Davenport*, 70 L.Ed. 813 (1926); *Panama Railroad Co.* v. *Vazquez*, 70 L.Ed. 1085 (1926); *Messel* v. *Foundation Co.*, 71 L.Ed. 1135 (1927); *Canet* v. *Moore McCormack Co.*, 317 U.S. 239 (1942); *Romero* v. *International Term. Co.*, 358 U.S. 354 (1959).

We are aware of the fact that insofar as the federal jurisdiction and the States are concerned, the Supreme Court of the United States has held that the right to trial by jury is part of the remedy granted by the Jones Act and the Federal Employer's Liability Act. *Jacob* v. *New York*, 315 U.S. 752 (1942); *Bailey* v. *Central Vermont Ry.*, 319 U.S. 350 (1943); *Blair* v. *B.O.R. Co.*, 323 U.S. 600 (1945); *Schulz* v. *Pennsylvania R. Co.*, 350 U.S. 523; *A & G Stevedores* v. *Ellerman Lines*, 369 U.S. 355.

In *Dice* v. *Akron*, 342 U.S. 359 (1952) an action brought under the Federal Employer's Liability Act in an Ohio state court, defendant's contention in the sense that if a state may provide for a nonunanimous jury, *Minneapolis & St. Louis R. Co.* v. *Bombolis*, 241 U.S. 211, it may also provide for a phase of the question to be singled out from the jury and determined by a judge, was rejected. In answering the afore-mentioned argument based on the *Bombolis* case, the court, in *Dice* v. *Akron*, stated the following at page 363:

> "The *Bombolis* case might be more in point had Ohio abolished trial by jury in all negligence cases including those arising under the federal Act. But Ohio has not

done this. It has provided jury trials for cases arising under the federal Act but seeks to single out one phase of the question of fraudulent releases for determination by a judge rather than by a jury."

In *Fitzgerald* v. *U. S. Lines*, 374 U.S. 16 (1963), a case under the Jones Act, brought before a federal District Court, the injured complainant based his complaint on negligence and also on unseaworthiness. Besides suing for personal injuries he sued for medical attention, for maintenance and cure, and wages. He demanded a jury trial for all his causes of action. The court granted a jury trial in the cause of action under the Jones Act and on the cause of action based on unseaworthiness but it concluded that the claims for maintenance and cure (which are traditionally admiralty remedies) should be decided by a judge without jury. The Supreme Court of the United States reversed and concluded that when a maintenance and cure claim is joined with a Jones Act claim all must be submitted to the jury when both arise of one set of facts. The Court stated that even when the causes of action grounded on negligence, unseaworthiness, and in maintenance and cure have different origins they should be submitted to the jury when they arise from the same facts. The Court argued that to do otherwise and split the lawsuit would create unnecessary complications and confusions. 374 U.S. at pages 18 and 19.

In *Fitzgerald*, as well as in *Dice* v. *Akron*, there existed jury trial but it was sought to split the lawsuit and the Supreme Court held that it could not be done. Neither of these cases dealt with a situation like ours where we do not have in our jurisdiction the trial by jury for civil actions. It is significant that in *Dice* v. *Akron*, the Court stated that the *Bombolis* case would have been more pertinent or more effective if the State had abolished the trial

by jury in *all* negligence cases. It is evident that the spirit of the Jones Act and of the judicial opinions which construe it is to the effect that in those jurisdictions *providing* for a trial by jury for civil actions (1) the actions under the Jones Act should be brought before a jury and (2) that when from the same facts also actions arise which were traditionally admiralty actions, the latter should also be decided by the jury, for the lawsuit should not be split.

Discussing this question, Professor Moore, after explaining that the seaman may put forward his claims in the federal courts in common law or in admiralty having the right of jury trial in the first case but not in the second, states that the seaman may also sue under the Jones Act in the state courts. In this last assumption, Moore explains, "The seaman may, then, put forward his entire claim in a state action and enjoy a jury trial on all the issues, *provided, of course, the state practice gives a jury trial on legal issues of this character.*" 5 Moore's Federal Practice, § 38.35 [4], 2d ed. (1969) p. 282. (Italics ours).

It is also significant that when insisting in holding a *civil* suit before a jury the Supreme Court of the United States has stated several times that the trial by jury in civil cases is a fundamental feature in the system of *federal* jurisprudence.[2] *Jacob v. New York City*, 315 U.S. 752 (Jones Act); *Bailey v. Central Vermont Ry.*, 319 U.S. 350, 354 (F.E.L.A.); *Dice v. Akron*, 342 U.S. 359, 363 (F.E.L.A.).

From the foregoing it is evident that the jurisdictions wherein trial by jury exists for civil cases cannot refuse trial by jury to those who file suit under the Jones Act. It is also settled that in those jurisdictions where jury trial exists for civil cases the lawsuits cannot be split to be

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[2] "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence." *Jacob v. New York City*, 315 U.S. 752.

heard part before a jury and part before a judge because some causes of action are traditionally admiralty causes and others are grounded on the Jones Act, if the different causes of actions arise from the same facts.

Of course, it is not incumbent upon us to decide what would be the situation in a case under the Jones Act being tried in a State court in which State the right to trial by jury in civil cases did not exist or had been abolished. The case at bar and our decision are exclusively limited to the particular situation of Puerto Rico.

The Congress, the Supreme Court, the Presidency, and the authors have recognized the special relationship existing between Puerto Rico and the United States since 1952 by virtue of the compact and the Constitution of Puerto Rico. The examples of this are numerous but we shall mention only some which are representative and eminent:

1. Public Law 600 of the 81st. Congress, approved on July 3, 1950, 64 Stat. 314, by which Congress with the approval of the President stated that "fully recognizing the principle of government by consent, this Act is now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption."

2. Public Law 447 of the 82d. Congress, approved on July 3, 1952, 66 Stat. 327, where it is stated that Law 600 "was adopted by the Congress as a compact with the people of Puerto Rico."

3. (a) Memorandum of the United States Government, (b) letter of March 21, 1953 from the United States Representative to the United Nations, to the Secretary General of said body, (c) letter of January 17, 1953 from the Governor of Puerto Rico to the President, and other related documents, *28 Department of State Bulletin* (U.S.) 584.

4. Memorandum of the President of the United States concerning the Commonwealth of Puerto Rico for the heads

of the executive departments and agencies of the United States Government, 26 *Federal Register* 6695 (1961), where the following is set forth: "Because of the importance and significance of Puerto Rico in the relations of the United States with Latin America and other nations, it is essential that the executive departments and agencies be completely aware of the unique position of the Commonwealth, and that policies, actions, reports on legislation, and other activities affecting the Commonwealth should be consistent with the structure and basic principles of the Commonwealth."

5. Judicial recognition of the "unique historic relationship between the Congress and the Commonwealth of Puerto Rico." *Katzenbach* v. *Morgan*, 384 U.S. 641, 658. In *Granville-Smith* v. *Granville-Smith*, 349 U.S. 1, 6, the court distinguished the current situation of Puerto Rico from the previous one. There the situation prior to 1952 was referred to as "pre-Commonwealth Puerto Rico."

6. Examples of the local application to Puerto Rico of federal laws with the previous express consent of the Legislative Assembly of Puerto Rico: (a) Public Law 859, 85th. Congress, and Act No. 3 of May 6, 1959, 1959 Sess. Laws of Puerto Rico, Third Regular Session, p. 13, through which the Legislature of Puerto Rico expressed its consent to the application in Puerto Rico of Section 5314 of the U. S. Internal Revenue Code of 1954, as amended by Public Law 859 of Congress; (b) Joint Resolution No. 97 of June 22, 1956 (J.R., 1956, p. 244), consenting to the application in Puerto Rico of a federal processing tax on refined sugar levied by the Sugar Act of 1948, Public Law 545 of Congress, May 29, 1956; (c) Joint Resolution No. 1, of July 25, 1956 of the Legislature of Puerto Rico (J.R., 1956, p. 334), expressing consent for the application to Puerto Rico of Sections 4701-4707 and 4771-4776 of the U. S. Internal Revenue Code of 1954, as amended, on and after the effective date of Public Law No. 728 of the 84th. Congress,

7. McGovern, "The Commonwealth Status of Puerto Rico," *15 U. of Pitt. L. Rev.* 1 (1953); Friedrich, *Puerto Rico: Middle Road to Freedom* (1959); Wells, *The Modernization of Puerto Rico*, Harvard University Press (1969), pp. 220-241; Cancio, Chief Judge, U.S. Dist. Ct. for P.R. "The Power of the Congress to Enter into a Compact with the People of Puerto Rico: The Legal Status of the Compact," 22 *Revista del Colegio de Abogados de P. R.*, 341 (1962). For a more comprehensive relation of books, official documents, and articles on the Commonwealth of Puerto Rico, see Appendix of the case *Commonwealth* v. *Marquez*, 93 P.R.R. 382, 397 (1966).

Section 9 of the Federal Relations Act between the United States and Puerto Rico provides that:

> "The statutory laws of the United States *not locally inapplicable*, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States. . . ."[3] (Italics ours).

And with regard to maritime questions in particular, Congress in § 8 of said Federal Relations Act provided that:

> "All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, *except so far as the same may be locally inapplicable*, shall apply to said island and waters and to its adjacent islands and waters; . . ." (Italics ours). 48 U.S.C. § 749.

As we stated before, because jury trials for civil actions do not exist in Puerto Rico, because that is foreign to our civil juridical tradition, because neither our laws nor our

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[3] 48 U.S.C. § 734. Public Law 600 of Congress, of July 3, 1950, consistent with its spirit, repealed a number of sections of the Jones Act of March 2, 1917, which Jones Act was formerly the Organic Act of Puerto Rico, and designated the remaining sections as the Puerto Rican Federal Relations Act.

Rules of Civil Procedure provide for it, and because our legislation provides for civil suits to be tried before the court without a jury, the provision of the Jones Act of 1920, 46 U.S.C. § 688 is locally inapplicable to Puerto Rico, inasmuch as it provides for jury trials in civil suits. For a case where federal law was found to be inapplicable to Puerto Rico, after the Commonwealth was established, see *U. S.* v. *Rios*, 140 F. Supp. 376 (1959).

As it may be seen, this case is an example of the enduring problem raised by the operation and development of the two sovereignties—the state and the federal—that exists in every federal system. Early in the life of the Republic, John Quincy Adams realized this when he said that the federal system was "the most complicated government on the face of the globe."[4] However, that difficulty has not prevented the American federal system from working. This has been thus because as a rule the main arbiter of said system, the Supreme Court of the United States, has construed its juridical framework with imagination and flexibility. This has been occasionally called "judicial statesmanship." Undoubtedly it is.

Consistent with the foregoing, the Supreme Court of the United States has always shown a wise deference towards the governmental and judicial processes of Puerto Rico. Now, due to the Puerto Rican constitutional developments of 1950-1952, is more valid than ever the pronouncement of the Supreme Court of the United States to the effect that:

> "Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island." *Bonet* v. *Yabucoa Sugar Co.*, 306 U.S. 505, 510.

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[4] ADAMS, *The Jubilee of the Constitution*, 115 (Colman, Ed. 1839), cited in BRENNAN, "Some Aspects of Federalism," 39 *N.Y.U.*

See in that same sense *Bonet* v. *Texas Co.*, 308 U.S. 463, 470-471; *Diaz* v. *Gonzalez*, 261 U.S. 102, 105-106; *Nadal* v. *May*, 233 U.S. 447.

As an author properly stated recently, Puerto Rico occupies a unique place in American law and a unique treatment is desirable to meet Puerto Rico's special political and cultural situation. This means, stated the author, that said treatment should answer to the situation and to the needs of the people. LEIBOWITZ, "The Applicability of Federal Law to the Commonwealth of Puerto Rico," *37 Rev. Jur. U.P.R.* 615, 674 (1968).

For the foregoing considerations, the order of the trial court refusing a trial by jury in the Superior Court of Puerto Rico in this case will be affirmed.[5]

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[5] In these cases of damages originating at sea, plaintiffs in Puerto Rico may choose between trying their cases before a Commonwealth court without a jury or before a jury in the United States District Court in Puerto Rico. Both systems of law are available to them in Puerto Rico, to choose the one they prefer.

APPENDIX C

GENERAL COURT OF JUSTICE
SUPERIOR COURT
SAN JUAN PART

Civil No. 65-2085
Plaintiff Demands Trial by Jury

DAMIAN GARCIA MERCADO,
PLAINTIFF,
v.
ALCOA STEAMSHIP CO., INC.,
DEFENDANT.

COMPLAINT

TO THE HONORABLE COURT:

Now Comes the plaintiff and through his undersigned attorneys respectfully alleges and prays:

For a First Claim for Relief:

First: At all the times herein mentioned the defendant is a corporation duly organized and existing, upon information and belief, by virtue of the laws of the State of New York, and its principal place of doing business is outside the Commonwealth of Puerto Rico.

Second: Upon information and belief, and at all times hereinafter mentioned, the defendant was the owner of a certain steamship or vessel known as the SS ALCOA RANGER.

Third: Upon information and belief, and at all the times hereinafter mentioned, the defendant chartered, operated, managed, controlled, provisioned, manned, supplied, and was in possession and control of said vessel.

Fourth: Upon information and belief, and at all the times hereinafter mentioned, and more particularly on or about the 13th day of October, 1963, plaintiff was in the employ of the defendant and the defendant employed the plaintiff aboard the aforesaid vessel as a seaman.

Fifth: That it was the duty of the defendant to provide the plaintiff with a seaworthy and safe vessel and appliances and crew and to keep same in a safe and secure condition; to furnish plaintiff with a safe and secure place to work and life while employed on its vessel; to furnish plaintiff with a safe and secure means of access to and egress from said vessel; to furnish plaintiff with competent fellow crew-members; and to warn plaintiff of the dangers arising out of and to be encountered in said work.

Sixth: That by reason of the negligence and failure of the defendant, its agents, servants and/or employees to perform the foregoing duties on or about the 13th day of October, 1963, while plaintiff was employed aboard the aforesaid vessel and was conducting himself in a proper manner and was not violating any laws or regulations, he was caused to be precipitated from a ladder to a deck.

Seventh: The aforesaid occurrence and resulting injuries to plaintiff were directly caused by the carelessness and negligence of the defendant, its agents, servants and/or employees in failing to fulfill their duties and obligations, to wit: furnish the plaintiff with a safe place to work; in failing to supply the plaintiff with a safe and seaworthy vessel, appliances and crew; in failing to supply a proper ladder to perform the work; in failing to secure the ladder; in failing to provide adequate equipment to reach the area where the plaintiff was assigned to paint; in failing to remove misplaced bricks upon which the plaintiff landed, aggravating his injuries; in failing to provide sufficient men to perform the task; in failing to properly supervise the operations being performed aboard the vessel; in failing to warn the plaintiff of the approaching hurricane; in failing to stop plaintiff from performing his work in view of the weather conditions; in failing to warn him and to

remove him from the ladder prior to the violent change in the vessel's course; in failing to warn the plaintiff of the danger which had arisen and which was to be encountered by him during the performance of his duties; and in otherwise failing to exercise due care and caution to prevent the happening of the occurrence.

Eighth: That by reason of the aforesaid personal injuries, plaintiff has been rendered sick, sore, lame and disabled, has sustained and is sustaining, and will probably sustain great pain, and mental anguish for a long time to come; has been and will be prevented from attending to his usual duties or vocation, resulting in a great loss of earnings thereby; has been obliged to undergo medical care and attention; is still undergoing same and will be obliged to pay out large sums of money for medical care and attention; and upon information and belief, the aforesaid injuries may be permanent in character and said loss of earnings may continue indefinitely, all to his damage in the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00).

Tenth: That by virtue of the Act of Congress, approved June 5, 1920, known as the Merchant Marine Act, amendatory to Act of Congress known as the Seaman's Act of 1915, and by virtue of Section 20 of said Act, plaintiff is entitled to all the favorable provisions of the Acts of Congress relating to the rights of railroad employees who are injured while engaged in interstate commerce, and plaintiff is entitled to recover for the negligence of the person in the defendant's employ who caused or permitted such conditions to exist, as aforesaid, and whose negligence resulted in the injuries sustained.

For a Second Claim for Relief:

Eleventh: Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraph First

through Fourth, Sixth, Eighth, and Tenth of this complaint, withthe same force and effect as if set forth at length herein.

Twelfth: That it was the duty of the defendant to provide the plaintiff with a seaworthy and safe vessel, appliances and crew, and to keep same in a seaworthy condition.

Thirteenth: The aforesaid injuries sustained by the plaintiff were directly caused by the failure of the defendant, its agents, servants and/or employees to provide a seaworthy, safe vessel and appliances and crew and to keep same in a seaworthy condition.

Fourteenth: That by reason of the failure of the defendant, its agents, servants and/or employees to provide a seaworthy, safe vessel, appliances and crew, plaintiff sustained damages in the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00).

For a Third Claim for Relief:

Fifteenth: Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs First through Fourteenth of this complaint, with the same force and effect as if set forth at length herein.

Sixteenth: That it was the duty of the defendant to provide the plaintiff immediate competent medical attention, medicines, nursing care and whatever was reasonably necessary under the circumstances.

Seventeenth: The plaintiff became disabled as hereinbefore described, but the defendant failed, neglected and refused to supply the plaintiff with immediate and proper medical care, treatment, medication and nursing services, which were reasonably necessary under the circumstances, as a result of which plaintiff's injury was caused to become more severe, aggravated and prolonged, and resulted in a permanent disability.

Eighteenth: That by reason of the aforesaid failure to provide proper medical care said plaintiff sustained damages in the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00).

For a Fourth Claim for Relief:

Nineteenth: Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs First through Eighteenth of this complaint with the same force and effect as if set forth at length herein.

Twentieth: That the plaintiff is entitled to the reasonable expenses of his maintenance and cure.

Twenty-First: That it was the duty of the defendant to provide the plaintiff with the expenses of his maintenance and cure upon plaintiff's becoming injured while employed by the defendant.

Twenty-Second: That the plaintiff became disabled as heretofore described but the defendant failed, neglected and refused to supply the plaintiff with the expense of his maintenance and cure.

Twenty-Third: The plaintiff is entitled, as a matter of law, to interest on each week's maintenance payment, to pain, suffering and mental anguish as a result of the defendant's wrongful refusal to make maintenance payments, and to attorney's fees.

Twenty-Fourth: That by reason of the aforesaid failure to supply the plaintiff with the expenses of his maintenance and cure and the consequences thereof, the plaintiff has sustained damages in the sum of ONE THOUSAND DOLLARS ($1,000.00).

WHEREFORE, plaintiff demands judgment against the defendant in the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), with interest, costs, expenses and attorney's fees on the First, Second, and Third Claims, and in the sum of ONE THOUSAND DOLLARS ($1,000.00), plus interest,

costs, expenses and attorney's fees on the Fourth Claim for Relief.

San Juan, Puerto Rico, May 2, 1965.

NACHMAN & FELDSTEIN
Attorneys for Plaintiff
P. O. Box 2407
San Juan, Puerto Rico 00903
By: (Signed)
Gustavo A. Gelpi

/awl
Internal Revenue Stamp
(Seal of the Superior Court)

Plaintiff Demands Trial by Jury

NOTICE

[CAPTION OMITTED]

TO THE HONORABLE COURT:

Plaintiff, exercising the right granted to him by the Jones Act, 46 U.S.C.A. Section 688, demands trial by jury.

San Juan, Puerto Rico, May 12, 1965.

NACHMAN & FELDSTEIN
P. O. Box 2407
San Juan, Puerto Rico
By: (Signed)
Gustavo A. Gelpi
Attorneys for Plaintiff

APPENDIX D

IN THE SUPERIOR COURT OF PUERTO RICO SAN JUAN PART

Civil No. 65-2085

DAMIAN GARCIA MERCADO,

PLAINTIFF,

v.

ALCOA STEAMSHIP COMPANY, INC.,

DEFENDANT.

ANSWER

NOW COMES the defendant, Alcoa Steamship Company, Inc., erroneously named Alcoa Steamship Corp., Inc. in the complaint, and answering the complaint respectfully alleges:

First Claim for Relief Alleged

Accepts the allegations stated in paragraphs 1, 2, 3, and 4, and denied the allegations stated in paragraphs 5, 6, 7, 8, and 10.

Second Claim for Relief Alleged

Defendant repeats, reiterates and realleges all of the allegations appearing in its answer to the first claim for relief alleged with the same force and effect as if they were alleged here, and denies the allegations states in paragraphs 12, 13, and 14.

Third Claim for Relief Alleged

Defendant repeats, reiterates and realleges all of the allegations appearing in its answer to the first and second alleged claims for relief with the same force and effect as if set forth at length here, and denies the allegations stated in paragraphs 16, 17, and 18.

Fourth Claim for Relief Alleged

Defendant repeats, reiterates and realleges all of the

allegations appearing in its answer to the first, second and third alleged claims for relief with the same force and effect as if they were alleged here and denies the allegations stated in paragraphs 20, 21, 22, 23, and 24.

First Affirmative Defense

Had the accident occurred, it happened because of the exclusive negligence of the plaintiff, or, in the alternative, because he contributed to its occurrence.

Second Affirmative Defense

Plaintiff abandoned the vessel where he was employed, thus violating the terms of his contract with the defendant.

WHEREFORE, defendant prays for the dismissal of the complaint with the other pertinent legal pronouncements.

San Juan, Puerto Rico, this 27th day of January, 1966.

HARTZELL, FERNANDEZ & NOVAS
By: (Signed)
Antonio M. Bird
Attorneys for Defendant
9th Floor, Banco Popular Building
P. O. Box 392
San Juan, P. R. 00902

APPENDIX E

GENERAL COURT OF JUSTICE
SUPERIOR COURT
SAN JUAN PART

DAMIAN GARCIA MERCADO,
PLAINTIFF,
v.
ALCOA STEAMSHIP CORP., INC.,
DEFENDANT.

Civil No. 65-2085

Plaintiff Demands Trial By Jury

MOTION FOR TRIAL SETTING AND ASSIGNMENT OF COURTROOM WITH JURY FACILITIES

TO THE HONORABLE COURT:

Now Comes the plaintiff and through the undersigned attorneys, respectfully alleges and prays:

1. That since the discovery of evidence has been completed, the parties are ready to hear the case on the merits.

2. That this action is based on the Jones Act, 46 U.S. C.A. § 688.

3. That the plaintiff, exercising his right to a jury trial, granted by the Jones Act, 46 U.S.C.A. 688, requested in due time that the trial be by jury.

4. That in view of the limited facilities for a jury trial at the Superior Court of Puerto Rico, San Juan Part, it is requested that the hearing of this case be assigned to some competent part where such facilities exist.

WHEREFORE, it is respectfully requested from this Honorable Court, a prompt setting of the trial on the merits

and that it be assigned to a competent Part with jury facilities.

San Juan, Puerto Rico, January 1st, 1966.

NACHMAN & FELDSTEIN
Attorneys for Plaintiff
P. O. Box 2407
San Juan, Puerto Rico 00903
By: (Signed) Gustavo A. Gelpi

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1226

DAMIAN GARCIA MERCADO, *Petitioner*,

v.

SUPERIOR COURT OF PUERTO RICO and ALCOA STEAMSHIP CO., INC., *Respondents*.

On Petition for a Writ of Certiorari to the Supreme Court of Puerto Rico

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BRIEF FOR RESPONDENT, SUPERIOR COURT OF PUERTO RICO IN OPPOSITION

OPINIONS BELOW

The Per Curiam Opinion and Judgment of the Supreme Court of Puerto Rico are set out as Appendix B to the Petition. The Order of the Superior Court of Puerto Rico, San Juan Part, is printed as Appendix A to the Petition.

JURISDICTION

The jurisdictional requisites under 28 U.S.C. § 1258 and Rule 19(1)(a) of the Rules of this Court are not met by this Petition.

QUESTION

Whether the Courts of Puerto Rico, which have no provision for trial by jury in civil actions, are required to provide trial by jury in a suit brought under the provisions of the Jones Act, 46 U.S.C. § 688.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent Constitutional and statutory provisions are set forth in the Petition at pp. 3-6.

STATEMENT

Petitioner, a seaman, was injured on the high seas off the United States coastline near New Orleans, Louisiana, while working on board the *S.S. Alcoa*. On May 13, 1965 he filed a complaint in the Superior Court of Puerto Rico, San Juan Part, Civil No. 65-2085, in which he claimed rights and benefits under the Jones Act, 46 U.S.C. § 688, (A translated copy of the complaint is at Appendix C to the Petition). Respondent Alcoa filed a Motion to Dismiss the Complaint alleging that "under the provisions of 46 U.S.C.A. § 688 jurisdiction shall be under the court of the district in which the defendant employer resides or in which his principal office is located." Therefore, "the courts with competence in this case are those of the State of New York." The petitioner filed an Opposition to the Motion to Dismiss the Complaint on June 3, 1965. The court rejected the Motion

to Dismiss on June 11, 1965. On January 27, 1966, Alcoa answered the complaint (Appendix D to Petition). Thereupon, on February 1, 1966, petitioner filed a motion entitled, "Motion for Trial Setting and for Assignment to a Courtroom Having Facilities for Jurors" (Appendix E to Petition). After hearing on the motion, the Superior Court on March 4, 1966 denied petitioner's request (Appendix A to Petition).

To review that denial, a petition for a writ of certiorari was filed in the Supreme Court of Puerto Rico on May 4, 1966, and on May 10, 1966 the Writ of Certiorari was issued. The Solicitor General of the Commonwealth of Puerto Rico intervened and, together with Alcoa Steamship Co., opposed petitioner's request for a trial by jury. After extensive memoranda of law and oral argument, the Supreme Court of Puerto Rico rendered a Per Curiam Opinion on October 14, 1970, affirming the decision of the Superior Court, San Juan Part (Appendix B to the Petition).

ARGUMENT

The question in the present case raises no federal issues of substance not previously determined by this Court, and in fact the decision below is precisely in accord with applicable decisions of this Court. The Supreme Court of Puerto Rico in affirming the Superior Court's denial of Petitioner's motion requesting that this civil action be heard before a jury, reached no federal question of any magnitude. Instead, it merely applied the long standing legal relationship between the United States and the Commonwealth of Puerto Rico set up by Congress and interpreted by this Court in a long line of cases. Rule 19(1)(a) of

this Court grants a review on writ of certiorari "where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court." Respondent intends to show that the non-availability of jury trials in civil actions in the courts of the Commonwealth of Puerto Rico, and hence the non-availability of jury trial in Jones Act cases brought in those courts, does not reach the level of a substantial federal question. Arguendo, if this Court determines that it is or may be a federal question of substance, the decision of the Supreme Court of Puerto Rico follows precedent set by this Court and is "in accord with applicable decisions of this court."

I.

JURISDICTION IS NOT PROPERLY FOUND IN CERTIORARI AS THERE HAS BEEN NO STATE COURT DECISION ON A "FEDERAL QUESTION OF SUBSTANCE NOT THERETOFORE DETERMINED BY THIS COURT," AS REQUIRED BY RULE 19 (1)(a) OF THE RULES OF THIS COURT

The present legal relationship of Puerto Rico to the United States is the result of various constitutional provisions and federal laws and their applicability to Puerto Rico. Since the enactment of 28 U.S.C. § 1258 in 1961, this Court reviews the decisions of the Supreme Court of Puerto Rico in the same fashion as decisions of the highest court of a state. Hence, Rule 19 of the Rules of this Court, governing jurisdiction on writ of certiorari, applies to Puerto Rico. That Rule says in part:

1. A review on writ of certiorari is not a matter of right but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicates the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this Court.

In the instant case, Petitioner asked this Court to review a decision of the Supreme Court of Puerto Rico, upholding a lower court decision, finding the right to trial by jury accorded under the Jones Act, 46 U.S.C. § 688, locally inapplicable to Puerto Rico. In so holding, it never reached "a federal question of substance" and relied heavily on "applicable decisions of this court" which have settled the relationship of federal laws to Puerto Rico.

It is not the intention of Respondent to repeat the discussion of the lack of a federal question of substance so amply laid out in the opinion by the Supreme Court of Puerto Rico. *See*, pp. 21-24 of Appendix to Petition. Rather, the Respondent wishes to urge on this Court the record which so amply shows the decisions below were based on the Civil Code of Puerto Rico, long recognized and respected by this Court, and did not deny any Constitutional right to the Petitioner, thus not reaching a federal question.

In passing the Jones Act of 1920, Congress gave the merchant seamen a right comparable to that enjoyed by other litigants in damages in the United States, that is, the right to hear their claim for damages before a jury. In Puerto Rico, the Civil Code is in effect. This dates back to the initial coloniza-

tion of the island by Spain. As part of this Code, all actions for damages including negligence are brought before a judge without a jury. There are no provisions either in the Constitution of Puerto Rico or in Puerto Rican law providing for a trial by jury in civil actions. Judiciary Act of Puerto Rico, Act No. 11 of July 24, 1952, 4 L.P.R.A. § 121 & § 181; Rule 43.1 of the Rules of Civil Procedure of Puerto Rico, 32 L.P.R.A. App. II (9 L.P.R.A. p. 191, 1969 ed.). It is important to point out that the federal court system exists in Puerto Rico and Petitioner might well have brought his action there and had his civil suit before a jury. This Court has frequently stated that the trial by jury in civil cases is a fundamental feature in the *federal system of jurisprudence*. *Jacob* v. *New York City*, 315 U.S. 752 (1943) [emphasis supplied]. The conclusions reached by the Supreme Court of Puerto Rico are entitled to great respect on review of its judgment by this Court. This Court, if it so chooses, will analyze the facts in order that the appropriate enforcement of a federal right may be assured. *See*, *Whitus* v. *Georgia*, 385 U.S. 545 (1966). As pointed out previously, the Petitioner could have brought his action in the federal court system in Puerto Rico and he would have had his trial by jury which is a fundamental feature of that system.

The question whether a state code is valid under the state constitution is ultimately for the state courts to decide, and this Court has long respected decisions by the state courts in these matters. *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1950). In the instant case, the Civil Code is valid under the state constitution and its provisions have long been upheld by this Court. *See*, *Bonet* v. *Texas Company, Inc.*,

308 U.S. 433 (1940); *Balzac* v. *Porto Rico*, 258 U.S. 298 (1922).

Petitioner at no time has sustained his allegation that the statutory right under the Jones Act rises to the level of the Federal Constitutionally guaranteed right to jury trial under the Seventh Amendment. There has been no denial by the courts of Puerto Rico of any constitutional right. The state court's construction of a federal statute should not be reviewed where judgment rests, as it did here, on a non-federal ground, that is, that the Civil Code of Puerto Rico, incorporated in the Commonwealth's Constitution and approved by Congress, does not provide for jury trials in civil matters. This non-federal ground is clearly adequate to the question. *See, Kalb* v. *Feuerstein*, 308 U.S. 433 (1940). The Supreme Court of Puerto Rico adequately considered Petitioner's Constitutional allegations:

> Discussing this question, Professor Moore, after explaining that the seaman may put forward his claims in the federal courts in common law or in admiralty having the right of jury trial in the first case but not in the second, states that the seaman may also sue under the Jones Act in the state courts. In this last assumption, Moore explains, "The seaman may, then, put forward his entire claim in a state action and enjoy a jury trial on all the issues, *provided, of course, the state practice gives a jury trial on legal issues of this character.*" 5 Moore's Federal Practice, § 38.35[4], 2d ed. (1969) p. 282. [Italics ours]. (See p. 21 of Appendix to Petition).

As previously indicated, it is essential to jurisdiction of this Court that in a petition for certiorari from a state court judgment upholding a state right there

be an explicit and timely insistence in the state court, not properly handled by that court, that the state right is repugnant to the Federal Constitution. *Wilson v. Cook*, 327 U.S. 474 (1946). The court below fully discussed the relationship of Puerto Rico and its Civil Code to the Federal Constitution.

II.

THE DECISION BELOW IS CLEARLY CORRECT AND FOLLOWS THIS COURT'S INTERPRETATION OF THE RELATIONSHIP BETWEEN PUERTO RICO AND THE UNITED STATES

As this Court said in a recent decision in *Fornaris v. The Ridge Tool Co.*, No. 841, Oct. Term, 1970 (Decided November 23, 1970), "the relations of the federal courts to Puerto Rico have often raised delicate problems. It is a Spanish-speaking Commonwealth with a set of laws still impregnated with the Spanish tradition. Federal courts, reversing Puerto Rican courts, were inclined to construe Puerto Rican laws in the Anglo-Saxon tradition which often left little room for the overtones of Spanish culture. Out of that experience grew a pronouncement by this Court that a Puerto Rican court should not be overruled on its construction of local law unless it could be said to be 'inescapably wrong'. See, *Bonet v. Texas Co.*, 368 U.S. 463, 471."

The present legal relationship of Puerto Rico to the United States is the result of the applicability of various constitutional provisions and federal laws to Puerto Rico. This Court has seen fit to defer, whenever possible, to the Commonwealth with its set of laws still "impregnated with the Spanish tradition". The Fifth Amendment requirement of indictment by grand jury and the Sixth Amendment requirement of trial by jury has specifically been held not to apply

to Puerto Rico. *Porto Rico* v. *Rosaly*, 245 U.S. 639 (1918); *Balzac* v. *Porto Rico*, 258 U.S. 298 (1922). In addition, the uniformity provision in Article I, Section 8 has been held not applicable. *Downes* v. *Bidwell*, 182 U.S. 244 (1901). The Sixth Amendment right to confrontation of witnesses, the Seventh Amendment right of trial by jury in common law cases, and, probably, the Fifth Amendment right against double jeopardy and the First Amendment protection against bills of attainder or ex post facto laws are not applicable to Puerto Rico. *See, Dorr* v. *U. S.*, 221 U.S. 325 (1911); *Puerto Rico* v. *Shell Co. (P. R.), Ltd. et al.*, 302 U.S. 253 (1937); *Grafton* v. *U. S.*, 206 U.S. 333 (1907); *Downes* v. *Bidwell*, *supra*. The constitutional restrictions upon a state of the union with respect to the regulation of interstate and foreign commerce and prohibition upon the levying of duties or imports were held not to apply to Puerto Rico. *Buscaglia* v. *Ballester*, 162 F.2d 805 (CA 1, 1947); cert. den. 332 U.S. 816 (1947). Due Process is the only constitutional requirement specifically held to be applicable to Puerto Rico, although whether it is the Fifth or Fourteenth Amendment is not clear. *Mora* v. *Mejias*, 206 F.2d 377 (CA 1, 1953).

In 1950, Congress passed Public Law 600, The Puerto Rican Federal Relations Act, 48 U.S.C. § 734, through which the Puerto Rican Constitution and Commonwealth Government were established. Section 9 of that Act between the United States and Puerto Rico provides that:

> The statutory laws of the United States *not locally inapplicable*, except as herein before or herein after otherwise provided, shall have the same force and effect in Puerto Rico as in the United States . . . [emphasis added].

The federal court system, and this Court in particular, has relied on this Section in considering the applicability of Federal Constitutional provisions and statutes to the Commonwealth of Puerto Rico. See cases cited *supra*.

Section 8 of this Act, placing the territorial waters of Puerto Rico under control of the Government of Puerto Rico, reiterates:

> All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce except so far as the same may be *locally inapplicable*, shall apply to said island and waters and to its adjacent islands and waters. [emphasis added].

Relying on this locally inapplicable language, the provisions of the Jones Act have been held to be supplanted by the Puerto Rican Workmen's Compensation Act by the First Circuit in *Fonseca* v. *Pesa*, 282 F.2d 153; cert. den. 365 U.S. 880 (1960). *Fonseca* was an action in which appellants were seamen and members of cruiser vessels, who were injured while at work on their respective vessels when afloat on navigable waters within the territorial limits of the Commonwealth of Puerto Rico. Their employers had insured their employees under the Puerto Rico Workmen's Compensation Act. Each appellant brought suit in the United States District Court for Puerto Rico against his employer to recover under the Jones Act. The United States District Court entered summary judgment for the respondent on the ground that the seamen's only remedy against their employers was afforded by the local Workmen's Compensation Act. The First Circuit stated that the present status of

the Commonwealth of Puerto Rico is not that of a state of the union nor even that of a territory incorporated to the union preparatory to statehood. As such, the Government of Puerto Rico has such powers as Congress from time to time has seen fit to give it. The Court stated that Congress conferred full power of control over local, navigable waters upon the Government of Puerto Rico to the complete exclusion of the admiralty and maritime law of the United States. It went on to conclude that neither the Jones Act, nor the General Maritime Law of Unseaworthiness, are inherently inapplicable to Puerto Rico, but that, on the other hand, there is nothing in the Jones Act specifically making its provisions applicable in the territorial waters of Puerto Rico and that the Court was not aware that Congress had ever taken action to make the General Maritime Law of Unseaworthiness apply in these waters. Instead, Congress, in a valid exercise of powers conferred upon it by the Constitution, gave the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the General Maritime Law, and the Legislature of Puerto Rico had exercised such power in passing the Workmen's Compensation Act. *See also, Colon-Nunez* v. *Hoyo-Linie*, 423 F.2d 932 (1970); *Lopez-Correa* v. *Marine Navigation Co.*, 289 F. Supp. 993 (1968).

If, under Section 8, the courts find that the entire Jones Act is locally inapplicable because Puerto Rico, in a valid exercise of its power, supplanted it by the passage of the Workmen's Compensation Act, then it is clear that under the general provision of Section 9 it is a valid exercise of the special powers granted to Puerto Rico to provide that suits in civil cases should be tried by judge only, and that any provision

of federal law that provides for trial of civil issues by jury is locally inapplicable unless Congress specifically provides otherwise. In *Alcoa Steamship v. Perez Rodrigues*, 378 F.2d 35 (1967), the First Circuit said:

> Moreover, particularly in view of the unique status of Puerto Rico, we think that if and when Congress deems it advisable to extend law to Puerto Rico which would otherwise have been inapplicable to that Commonwealth it will do so in clear and explicit terms. Id. at 38.

Using this line of precedent, the court below stated:

> [B]ecause jury trials for civil actions do not exist in Puerto Rico, because that is foreign to our civil juridical tradition, because neither our laws nor our Rules of Civil Procedure provide for it, and because our legislation provides for civil suits to be tried before the court without a jury, the provision of the Jones Act . . . is locally inapplicable to Puerto Rico . . . (Appendix to Petition at pp. 24-25).

III.

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW AS PETITIONER HAS NOT BEEN DENIED ANY OF HIS CONSTITUTIONAL RIGHTS AS A UNITED STATES CITIZEN

Petitioner suggests there has been a denial of his constitutional right which raises a question of federal law. As previously pointed out, there is no federal question involved as the decisions below clearly indicate. Petitioner has endeavored to convert the statutory provisions of the Jones Act into constitutional maritime rights. This is clearly erroneous.

The Jones Act traces its origin to the Seaman's Act of 1915. As originally enacted, that Act was part

of legislation the declared purpose of which was "to promote the welfare of American seamen." It provided that in suits to recover damages for personal injuries the common law "fellow servant rule" would not apply. In *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 384 (1918), this Court treated it as part of the maritime law, but held it did not disclose the purpose "to impose on shipowners the measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore." After that restrictive decision, the Seaman's Act was reenacted in 1920 as the Jones Act with the expressed object to provide for the promotion and maintenance of the American merchant marine. In its current form, the Act makes applicable to personal injuries suffered by seamen in the course of their employment all the rights granted by the Federal Employers' Liability Act, 45 U.S.C. § 51-60. The rights granted by the reenactment in 1920 included the right to bring the actions for damages before a jury. The history of the Jones Act indicates that Congress sought to put merchant seamen on a par with other claimants in negligence actions. Common law actions in negligence have been traditionally brought before a jury in the United States, and the provision in the Jones Act providing the right to trial by jury so reflects. However, the right to trial by jury in civil litigation in Puerto Rico is unknown. To provide the right to trial by jury to seamen in the United States is to equalize; to provide the right to seamen in the Puerto Rican court system would be to provide an extra-privilege not enjoyed by other civil litigants. The ability of states to determine procedural rules for trial by jury was discussed by this Court

in *Dice* v. *Akron, C. & Y. R. Co.*, 342 U.S. 359 (1951):

> It is contended that since a state may consistently with the federal constitution provide for a trial of cases under the Act [FELA] by a non-unanimous verdict, *Minneapolis & St. Louis R. Co.* v. *Bombolis*, 241 U.S. 211, Ohio may lawfully eliminate trial by jury as to one phase of fraud while allowing jury trial as to all other issues raised. The *Bombolis* case might be more in point had Ohio abolished trial by jury in all negligence cases including those arising under the federal Act. But Ohio has not done this. It has provided jury trials for cases arising under the federal Act but seeks to single out one phase of the question of fraudulent releases for determination by a judge rather than by a jury. Id. at 363.

By its very language, this Court points out that a state which had abolished trial by jury in all negligence cases including those arising under the federal Act, could probably do so. As previously mentioned, insofar as the federal jurisdiction is concerned, this Court has held that the right to trial by jury is part of the remedy granted by the Jones Act. *Jacob* v. *New York*, *supra*. However, it seems incongruous to extend this federal jurisdiction rule to the courts of Puerto Rico, which do not have the trial by jury for civil actions. By its actions in approving the constitution chosen by the people of Puerto Rico, Congress has recognized the existence of the Civil Code in Puerto Rico with its inherent provision providing trial for negligence matters before a judge alone. As was stated in *United States* v. *Rios*, 140 F. Supp. 376 (1959):

> [S]uch local transactions or conduct ought to be dealt with by the Commonwealth under its own

> constitution and internal laws and it would be frustrative of the very purpose and intention of Congress in establishing the new status to hold now that said statute may accomplish by indirection the very thing Congress expressly wanted to leave in the hands of the Commonwealth government. Id. at 383.

The opinion of the Supreme Court of Puerto Rico clearly defined the distinction between statutory provision for trial by jury under the Jones Act and constitutional rights guaranteed by the Seventh Amendment. As that Court pointed out:

> In the United States the trial by jury in civil actions of maritime jurisdiction was never known during the time of the colonies nor under the Constitution. Already in *Waring v. Clarke* . . . it was concluded that what the Seventh Amendment guarantees is that in suits at common law the trial by jury should be "preserved" and that said Amendment is not applicable to suits in admiralty. There being no trial by jury in admiralty there was nothing to preserve in regard to the trial by jury in said maritime law. (Appendix to Petition, pp. 18-19.)

Petitioner's request for trial by jury was clearly based on statutory law. This statute has been demonstrated to be clearly "inapplicable" to Puerto Rico. Petitioner "availed himself of his right to elect the forum (admiralty, Federal, or State) . . ." (See Petition at p. 8.).

By electing the Commonwealth (State) forum, this Puerto Rican petitioner, represented by Puerto Rican counsel, deliberately chose to bring action in the Superior Court of Puerto Rico fully aware that the Civil Rules of that court made no provision for trial

by jury in negligence cases, and that the physical arrangements of that court were such that no facilities for accommodating a jury existed. They were completely aware that had they elected to bring action in the federal court in Puerto Rico, trial by jury would have been automatically granted.

This Court has said it will not undertake to decide a question of the constitutionality of state action unless no alternative is available. No substantial right of petitioner is involved since trial by jury is available in the federal court in Puerto Rico and only by the voluntary election of action in the Superior Court of Puerto Rico has petitioner created this issue.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

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